

In the Matter of Interest Arbitration	}	OPINION AND AWARD
	}	
Between	}	
	}	
City of Crystal	}	BMS Case: 06-PN-0525
	}	
(the Employer or City)	}	
	}	
and	}	
	}	
Law Enforcement Labor Services, Inc.	}	Neutral Arbitrator:
	}	Eugene C. Jensen
Local 44	}	
	}	
(the Union)	}	

Advocates

For the Union:

Terry Herberg, Business Agent
Law Enforcement Labor Services, Inc.
327 York Avenue
Saint Paul, MN 55101-4090

For the Employer:

Ann Antonsen
Labor Relations Associates
% Springsted
380 Jackson Street
Saint Paul, MN 55101-2887

Witnesses

Harry Algyer
Chief of Police

Kim Therres
Assistant City Manager and
Human Resources Manager

Statement of Jurisdiction

On February 22, 2006, the Commissioner of the Bureau of Mediation Services for the State of Minnesota, pursuant to M.S. 179A.16, Subd. 2 (Public Employment Labor Relations Act [PELRA], certified the parties' bargaining process at impasse in connection with their collective bargaining agreement for calendar years 2006 and 2007. On April 10, 2006, the parties notified the undersigned that he had been selected as the Arbitrator to hear evidence and arguments

concerning the outstanding issues, and to thereafter render an award. On June 21, 2006, in Crystal, Minnesota, a conventional interest arbitration hearing was held to resolve collective bargaining issues about which the parties are at impasse. Both parties expressed a preference for submitting written summary briefs, and they simultaneously mailed those briefs to the Arbitrator and to each other on July 6, 2006, at which time the hearing was deemed closed.

Background

The Employer is the City of Crystal. The Union is the certified collective bargaining representative of the Police Officers (Patrol Officers) within the Crystal Police Department. In this proceeding the parties seek to use the arbitration provisions of PELRA to resolve impasse on the following issues concerning their labor agreement:

1. Wages – What shall the wage differential be for the Field Training Officer, Investigator, and Officer in Charge for 2006? Article 29
2. Wages – What shall the wage differential be for the Field Training Officer, Investigator, and Officer in Charge for 2007? Article 29
3. Insurance – What shall the Employer contribution be for 2006? Article 18.1
4. Insurance – What shall the Employer contribution be for 2007? Article 18.1
5. *Insurance – What shall the language and Employer contribution be for the Post Retirement Health Care Savings Plan? Article 18.6

*Immediately prior to the evidentiary phase of the hearing, the parties notified the Arbitrator that issue number five (5) above was resolved.

Final Positions of the Parties

The Commissioner requested the following in his February 22, 2006, Certification to Arbitration letter to the parties:

Final positions should be in the form of the contract language desired by each party. For the convenience of the arbitrator(s), it is

advisable to highlight proposed new or revised language in such submissions.

Each party shall submit their final positions on these items to the Bureau no later than Thursday, March 9, 2006.

In a letter dated March 1, 2006, the Union submitted its final positions on the above-mentioned issues:

ARBITRATOR'S NOTE: The following is a summary of the Union's final positions.

1. Wages – 2006

Field Training Officer	\$1.29 per hour
Investigator	\$283.25 per month
Officer in Charge	\$2.06 per hour

2. Wages – 2007

Field Training Officer	\$1.34 per hour
Investigator	\$293.16 per month
Officer in Charge	\$2.13 per hour

3. Insurance – 2006 (Employer Contribution)

Single	\$383.41
Employee + Spouse	\$558.65
Employee + Child(ren)	\$558.65
Family	\$646.75

4. Insurance – 2007 (Employer Contribution)

The Union requested that the contract be re-opened to negotiate the Employer's insurance contribution for calendar year 2007.

5. Insurance – Resolved (see above).

In a letter dated March 6, 2006, the Employer submitted its final positions on the above-mentioned issues:

ARBITRATOR'S NOTE: The following is a summary of the Employer's final positions.

1. Wages – 2006. No change from the existing Labor Agreement.
2. Wages – 2007. No change from the existing Labor Agreement.
3. Insurance – 2006. The same amount as that contributed for the City's other employees.

Single	\$383.41
Employee + Spouse or Child	\$545.00
Family	\$646.75

4. Insurance – 2007. The same amount as that contributed for the City's other employees.
5. Resolved (see above).

Evidence and Arguments

Employer

Issues 1 & 2: Wage differentials for Field Training Officer, Investigator and Officer in charge in 2006 and 2007.

The Employer argues that the City of Crystal is a Stanton Group VI city, and that external comparables justify its position not to increase the wage differentials for the above-mentioned assignments. The Employer assessed all three assignments in its written documents:

ARBITRATOR'S NOTE: The following are excerpts from the Employer's post hearing brief.

Investigator

A comparison of the wage differential paid for investigators/detectives for other Stanton Group VI cities indicates that all cities pay a differential for this duty assignment. The average differential paid for this duty assignment over and above the base wage rate paid to top patrol officers for 2005 was \$202.05 per month and \$204.66 per month for 2006 for those cities which have settled their contracts for 2006.

The City of Crystal Paid \$250.00 per month for January through November of 2005 and increased that amount, effective December 1, 2005 to \$275.00 per month. . . .

The parties have historically agreed to an increase in the wage differential paid for the investigator duty assignment every two (2) to four (4) years. . . . Given the fact that the differential is significantly higher than the market average, no increase is warranted for 2006 or 2007.

Field Training Officer

There are 27 Stanton Group VI cities. Of these 27 cities, 21 pay a differential to Police Officers assigned to Field Training Officer duties. Of these 21 cities there is no consistency in the differential paid for these duties. . . .

Of those cities that pay a per hour differential the average is \$1.27 per hour. The City of Crystal's current differential of \$1.25 per hour is comparable to the market average.

Officer in Charge

Of the 27 Stanton Group VI cities, only six pay a differential to employees assigned Officer in Charge duties. . . .

The average for those five (5) cities that pay a per hour differential is \$1.64 per hour. The city of Crystal pays \$2.00 per hour which is 22% above the average paid for other cities.

The current differential of \$2.00 per hour when added to the current top patrol rate of \$27.264 per hour is \$29.264 which is higher than the starting rate of pay for a Sergeant which is \$29.105 and a Sergeant has significantly more duties and responsibilities than a police officer assigned Officer in Charge duties. (The Chief of Police, Harry Algier, testified that the Officer in Charge performs less than 50% of the duties of a Sergeant).

Issues 3 & 4: Employer insurance contributions for 2006 and 2007.

The Employer stated that they gave all employees, both represented and non-represented, the same employer contribution, and that those rates should also apply to the employees in this bargaining unit. The Employer argued the following points:

ARBITRATOR'S NOTE: The following are excerpts from the Employer's post hearing brief.

The majority of arbitrators have ruled that the insurance contribution for all employees should be equal and that the most important factors for comparisons are internal comparables.

Interest arbitration precedent demonstrates that arbitrators reject requests by one employee group for higher levels of fringe benefits.

. . .

The employer's contribution toward health insurance is also the only fringe benefit of concern to the Department of Employee Relations. If an employer's insurance contribution level differs for a male dominated employee group, the employer must report the contribution amount as an addition to the maximum wage reported for all job classes. . . . A public employer can be found "out of compliance" with the Local Government Pay Equity Act if it provides a higher level of insurance contribution to its male employees. . . .

For 2007, the City has not reached settlement with any of the City's other employee groups and the rates, at this time, are unknown. The City is proposing that the arbitrator award language that states:

"The employer shall contribute the same amount as that contributed for the City's other employees."

This proposal is supported by the fact that the City has historically contributed the same dollar amount towards health insurance for all employee groups.

Union

Issues 1 & 2. Wage differentials for Field Training Officer, Investigator and Officer in charge in 2006 and 2007.

The Union proposes that the wage differentials for the above-mentioned assignments be increased by 3% in 2006 and by 3.5% in 2007, and that the following arguments support their position.

ARBITRATOR'S NOTE: The following are excerpts from the Union's post-hearing brief.

The Union is simply proposing the agreed upon general increase for 2006 and 2007 be applied to Field Training Officer, Investigator,

and Officer In Charge. The value of these positions does not decrease over time, therefore an increase is warranted.

The Officer In Charge and Field Training Officer differential hasn't increased since January 1, 2001. The value of the \$2.00 per hour and \$1.25 per hour respectively has eroded over time, and there needs to be an increase to recognize the effect of inflation. The Investigator differential increased in 2005 for the first time since 2001. The ground gained in that contract will be lost if no increase is awarded. A reasonable increase in Investigator differential is also necessary to keep pace with inflation. . . .

The Consumer Price Index increased 3.4% December 2003 to December 2004. It increased 3.5% December 2004 to December 2005. The most recent data, May 2006, indicated a 4.3% increase.

Issue 3. Employer contribution for insurance in 2006.

The Union argues that the Employer contribution for employees who select the "Employee and Spouse or Child" option should be increased by \$13.69 per month. The Union offers support for its position in the following way:

ARBITRATOR'S NOTE: The following is an excerpt from the Union's post-hearing brief.

In 2006, the City based its proposed increases on the Medica Elect Plan. The City paid 100% for single coverage under this plan. The increased cost in family coverage was shared equally by the City and employee. The difficulties between the City and the Union arose when the City proposed to move a majority of the premium increase onto the employee for the employee plus plans.

Assistant City Manager, Kimberly Therres, testified the City's objective was to pay the same percentage for the employee plus plans as the City pays for the family plans. Obviously, the same objective could be reached by increasing the family amount by a greater percentage and still sharing equally the increases in the plus plan. The City chose the method resulting in a savings to them and moved more of the cost onto employees.

The Union material reveals the City portion of family coverage is about \$23 a month below the Stanton 6 comparable cities, \$646.75 vs. \$669.83.

There is additional savings to the City in having plus plans. Employee's taking the plus plans would need to have family

coverage if the plus plans weren't available. There are currently 20 members in this bargaining unit. Only 3 are enrolled in the plus plans. The cost of the Union proposal versus the City proposal is only \$163.80 per year, per employee, or a total of \$491.40 for 2006.

Issue 4. The Employer Insurance Contribution for 2007.

The Union offers the following to support its contention that a contract re-opener is appropriate to determine the Employer's contribution for insurance in 2007:

ARBITRATOR'S NOTE: The following is an excerpt from the Union's post-hearing brief.

There are no City employees with a 2007 insurance settlement. The City's proposed language could be interpreted to mean if they enforce a settlement on non-union employees this Union would be forced into the same settlement. The Non-Union contribution hasn't been set yet because the 2007 increase isn't available yet. The AFSCME contract expires on December 31, 2006, which means they will be negotiating insurance for 2007. The Police Supervisors have a re-opener for employer contribution toward insurance in 2007. This Union should not be locked out of the bargaining table with all other unions negotiating for insurance in 2007, there is no reason to keep this group away from the bargaining table. The past practice has been a re-opener for insurance year two of a two year agreement.

Discussion and Award

Absent a negotiated agreement between the parties regarding the issues at bar, the Arbitrator is left the task of determining what the parties would have agreed to had they successfully completed the bargain. In doing so, I make the assumption that a negotiated settlement would have been consistent with the agreement as a whole. In essence, expect no surprises.

Issues 1 and 2: Wage differentials for Field Training Officer, Investigator and Officer in charge in 2006 and 2007.

The Union asks for increases in both years: 3% and 3.5% respectively. The Employer asks for the status quo in both years.

It is clear from the bargaining history that the parties have used flat rates, rather than percentages, in supplementing Patrol Officers' pay for the three above-mentioned assignments. If the parties had negotiated a flat rate and then tied any future adjustments to the percentage increase contained in the general wage

adjustment, the parties would have automatically addressed the Union's concern about inflationary erosion. Instead, it has been the practice of the parties to periodically negotiate adjustments to the flat rates. This award will respect the negotiating practice of the parties:

Field Training Officer

While the Employer makes a convincing argument regarding the level of compensation compared to similarly situated jurisdictions, some respect must be given to the value that the Union secured in previous negotiations. For reasons known only by the negotiators in the "give and take" of contract negotiations, the parties agreed to a specific level of compensation. It is only reasonable to assume that the Union would be aggressive in attempting to maintain that level. If an adjustment is not made, based solely on external comparisons, the previous Union gain is effectively lost without a barter.

Arbitrator's Award: \$.05 per hour increase effective January 1, 2006; no increase in the second year of the Agreement (2007).

Investigator

If I apply the reasoning stated above (Field Training Officer) to the Investigator assignment, I arrive at a different conclusion. The "expected" periodic adjustment was negotiated into the 2005 Agreement: the rate was adjusted up 10%, from \$250.00 per month to \$275.00 per month. I see no reason to disturb the parties' methods in resolving the pay differential for this assignment.

Arbitrator's Award: No increase in 2006; no increase in 2007.

Officer in Charge

Once again, using the reasoning from the Field Training Officer award above – I believe that a flat-rate adjustment is warranted.

Arbitrator's Award: \$.08 per hour increase effective January 1, 2006; no increase in the second year of the Agreement (2007).

Issue 3: Employer contribution for insurance in 2006.

The Union asks for an increase in the Employer's insurance contribution for employees who choose the Employee and Spouse or Child option. The Employer asks that the contribution amount be left the same as it is for other employees (both represented and non-represented).

While I agree with the Employer's view that insurance benefits tend to be equalized across the entire employee pool, it is still true that the Union has the

obligation under PELRA to negotiate for its individual employee group. While it is not common to see differences in fringe benefits across various bargaining units within the same public jurisdiction, they do occur.

In the instant case, however, I see no justification to award a different contribution rate for this particular bargaining unit. While negotiations must occur over such a significant “term and condition of employment,” there is no guarantee, or in this case, indication that the parties would have reached a different outcome.

Arbitrator’s Award: The Employer’s position is upheld for the 2006 calendar year; the Employer’s contribution for employees who choose the Employee and Spouse or Child option shall be the same as for other employees of the City.

Issue 4: Shall there be a contract re-opener clause that allows the Union to bargain for insurance benefits for calendar year 2007?

The Employer wants the Union to be subject to the same insurance benefits that it arrives at through bargaining with other employee groups. The Union asks for the right to bargain for insurance benefits for 2007.

Whereas insurance benefits twenty-five years ago were for the most part a given, and oft-times only casually negotiated, this has not been true in more recent years. Insurance is serious business, and the related costs can make or break a potential agreement. It would be inappropriate – both procedurally and legally (PELRA) -- to deny the Union its “voice” during the bargain.

Arbitrator’s Award: The Agreement shall contain a provision that allows the Union to request a contract re-opener to negotiate insurance benefits in the second year of the Agreement.

July 28, 2006

Eugene C. Jensen, Neutral Arbitrator